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DEBASHIS BAGCHI, and JON BENGTON7  
8 UNITED STATES DISTRICT COURT

9 NORTHERN DISTRICT OF CALIFORNIA, SAN JOSE DIVISION

10  
11 ANUBHAV SINGH OBEROI,

12 Plaintiff,

13 vs.

14 AIRWIRE TECHNOLOGIES, JON  
BENGTON, DEBASHIS BAGCHI, and  
15 DOES 1 through 20, inclusive,

16 Defendants.

CASE NO. 5:20-cv-00753-SVK

**DEFENDANTS AIRWIRE  
TECHNOLOGIES, DEBASHIS BAGCHI,  
AND JON BENGTON'S ANSWER TO  
PLAINTIFF'S COMPLAINT**17  
18 Defendants, Debashis Bagchi, Jon Bengton, and AirWire Technologies ("AirWire")  
19 (collectively "Defendants"), by and through their undersigned legal counsel of record, hereby  
20 answer the Complaint of Plaintiff Anubhav Singh Oberoi ("Plaintiff") ("Complaint"), and admit,  
21 deny and aver as follows:22 **PARTIES**23 1. Defendants have insufficient information with which to admit or deny that the  
24 Plaintiff is a resident of the County of Santa Clara in the State of California and that he worked  
25 primarily from his home office in San Jose, California, as alleged in Paragraph 1 of the Complaint,  
26 and, therefore, deny the same. Defendants admit, however, that Plaintiff was an employee of  
27 AirWire from approximately February 2016 through December 31, 2017. Defendants deny each  
28 and every other allegation in Paragraph 1 of the Complaint.

1           2.       Defendants admit that AirWire, as alleged in Paragraph 2 of the Complaint, is a  
2 Nevada corporation with its principle place of business in Reno, Nevada. Defendants admit  
3 further that AirWire has registered with the Secretary of State of California as a foreign  
4 corporation. Defendants deny that AirWire does business, as alleged in Paragraph 2 of the  
5 Complaint, in the County of Santa Clara, California.

6           3.       Defendants admit, as alleged in Paragraph 3 of the Complaint, that Defendant  
7 Bengtson is the Chairman and Chief Financial Officer of AirWire and is a resident of the City of  
8 Reno, State of Nevada.

9           4.       Defendants admit, as alleged in Paragraph 4 of the Complaint, that Defendant  
10 Bagchi is the Chief Executive Officer of AirWire and is a resident of the City of Reno, State of  
11 Nevada.

12          5.       Defendants have insufficient information with which to admit or deny the  
13 allegations of Paragraph 5 of the Complaint and, therefore, deny the same.

14                                   **JURISDICTION AND VENUE**

15          6.       Defendants have insufficient information with which to admit or deny that the  
16 Parties of the Complaint are citizens of a foreign state, as alleged in Paragraph 6 of the Complaint,  
17 and, therefore, deny that Defendants are subject to personal jurisdiction pursuant to 28 U.S.C. §  
18 1332(a). Defendants admit, however, that the amount in controversy exceeds \$75,000, exclusive  
19 of interest and costs.

20          7.       Paragraph 7 of the Complaint appears to consist of legal conclusions warranting no  
21 responsive pleading. If, however, a responsive pleading is required, Defendants admit that  
22 Plaintiff alleges claims under the Fair Labor Standards Act of 1938, 29 U.S.C. § 203 ("FLSA"),  
23 and that the FLSA is a law of the United States. Defendants deny the remaining allegations of  
24 Paragraph 7 of the Complaint.

25          8.       Paragraph 8 of the Complaint appears also to consist of legal conclusions  
26 warranting no responsive pleading. If, however, a responsive pleading is required, Defendants  
27 Bagchi and Bengtson deny that the Court has personal jurisdiction over them because they deny  
28 that they conduct substantial business in the State of California, including the District where this

1 Action was filed. AirWire admits this Court has jurisdiction over it.

2 9. Defendants admit, as alleged in Paragraph 9 of the Complaint, that AirWire has  
3 registered as a foreign corporation with the Secretary of State of the State of California.

4 10. Paragraph 10 of the Complaint appears to consist of legal conclusions warranting  
5 no responsive pleading. If, however, a responsive pleading is required, Defendants deny that a  
6 substantial part of the events giving rise to the alleged claims arose in the District where this  
7 Action was filed. AirWire admits that it employed Plaintiff while he was in the State of  
8 California. Defendants Bagchi and Bengtson deny that they were ever Plaintiff's employer under  
9 the FLSA, the California Labor Code or common law. Defendants deny the remaining allegations  
10 of Paragraph 10 of the Complaint.

11 **FACTS COMMON TO ALL CAUSES OF ACTION**

12 11. Defendants admit, as alleged in Paragraph 11 of the Complaint, that Plaintiff joined  
13 AirWire as its Vice President of World-Wide Business Development in February of 2016.  
14 Defendants admit, further, that AirWire ceased making payments to Plaintiff on his salary by  
15 reason of poor financial conditions and prospects of the Company. Defendants deny that  
16 Defendants Bagchi and Bengtson advised Plaintiff that imminent influxes of capital would permit  
17 AirWire to resume payments on Plaintiff's salary as an inducement for the Plaintiff to continue  
18 working for AirWire. Defendants admit that Plaintiff and AirWire agreed that Plaintiff would  
19 continue working for a period of time but that the Plaintiff would be compensated for his work at a  
20 later date, as evidenced by the fact that Plaintiff chose to continue working without objection and  
21 that Plaintiff did indeed receive substantial advances against the compensation he would receive at  
22 a later date. Defendants have insufficient information with which to admit or deny that the  
23 Plaintiff depleted his savings and drained his 401K accounts and, therefore, deny the same.

24 12. Defendants deny as alleged in Paragraph 12 of the Complaint that AirWire  
25 discontinued payment to the Plaintiff of his salary. Rather, they aver that AirWire and Plaintiff  
26 agreed that Plaintiff would be paid for his services at a later date and in addition, in furtherance of  
27 this understanding, AirWire made significant advances to the Plaintiff over the remainder of the  
28 23 month period of time Plaintiff was employed by AirWire. Defendants aver, further, that in

1 March of 2018, the officers of AirWire, like Plaintiff, were advised that AirWire would stop  
2 accruing payroll. Plaintiff was informed, then, that he was free to seek other work. Defendants  
3 deny each and every other allegation in Paragraph 12 of the Complaint.

4 13. The defendants admit as alleged in Paragraph 13 of the Complaint, that AirWire,  
5 through Defendant Bengtson, CFO of AirWire, circulated to the officers of AirWire a  
6 memorandum stating that AirWire would no longer accrue compensation for the officers and  
7 directors, including Defendants Bengtson and Bagchi, as of December 31, 2017. Defendants  
8 admit that Plaintiff had stayed with AirWire up to that date pursuant to the Parties' agreement that  
9 Plaintiff would be compensated at a later date. Defendants deny the remaining allegations of  
10 Paragraph 13 of the Complaint.

11 14. Defendants deny, as alleged in Paragraph 14 of the Complaint, that AirWire owes  
12 Plaintiff hundreds of thousands of dollars in back wages and denies, further, that it opted, instead  
13 of paying Plaintiff, to pay significant advances to Defendant Bagchi and other officers. AirWire  
14 denies, further, as alleged in Paragraph 14 of the Complaint, that it invested in other business  
15 investments rather than pay Plaintiff, or for that matter that it paid Defendants Bengtson and  
16 Bagchi their salaries. Defendants deny, finally, that AirWire or the individual Defendants owed  
17 Plaintiff hundreds of thousands of dollars. Defendants deny the remaining allegations of  
18 Paragraph 14 of the Complaint.

19 **FIRST CAUSE OF ACTION**  
20 **(FLSA MINIMUM WAGE VIOLATIONS 29 U.S.C. § 201, et. seq.)**

21 15. Defendants hereby incorporate by reference their responses to Paragraphs 1 through  
22 14 of the Complaint as if set forth fully below.

23 16. Paragraph 16 of the Complaint appears to consist of legal conclusions warranting  
24 no responsive pleading. If a responsive pleading is required, however, Defendants deny that they  
25 have been and continue to be an employer engaged in interstate commerce within the meaning of  
26 the FLSA, 29 U.S.C. § 2003, et. seq., and that Defendants were, at all relevant times, covered by  
27 Title 29 U.S.C. § 2003(e)(1) of the FLSA of 1938. At all relevant times, AirWire never had the  
28 requisite revenues to qualify as a covered entity under the FLSA and Defendants Bengtson and

1 Bagchi were never employers under the FLSA, the California Labor Code, and under common  
2 law.

3 17. Paragraph 17 of the Complaint appears to consist of legal conclusions warranting  
4 no responsive pleading. If a responsive pleading is required, however, Defendants deny the  
5 allegations of Paragraph 17 of the Complaint.

6 18. Defendants deny each and every allegation contained in Paragraph 18 of the  
7 Complaint and aver, further, that AirWire and Plaintiff agreed that Plaintiff would be  
8 compensated, later, as the Vice President, World-Wide Business Development, of AirWire.

9 19. Defendants deny the allegations of Paragraph 19 of the Complaint.

10 20. Paragraph 20 of the Complaint appears to consist of legal conclusions warranting  
11 no responsive pleading. If a responsive pleading is required, however, Defendants deny the  
12 allegations of Paragraph 20 of the Complaint.

13 21. Defendants admit, as alleged in Paragraph 21 of the Complaint, that Defendant  
14 Bagchi was the Chief Executive Officer of AirWire and that as Plaintiff was Vice President of  
15 World-Wide Business Development for AirWire; his direct report was to Defendant Bagchi.  
16 Defendants admit, further, that Defendant Bengtson was and is AirWire's Chairman of Board of  
17 Directors of AirWire and the Chief Financial Officer (CFO) of the Company. As the plaintiff was  
18 a Vice President of the Company in charge of world-wide business development, he was expected  
19 to be a self-starter and to formulate business development plans and, therefore, the defendants  
20 deny that Bagchi controlled and directed the plaintiff's work, both in terms of the means and  
21 manner in which the plaintiff performed his job. The defendants admit further that defendant  
22 Bengtson, as CFO and Board Chairman, participated in the decision-making process of the  
23 management of the Company related to his duties as CFO. The defendants deny, however, that  
24 they made small installment payments to plaintiff's wages, instead advancing at least \$100,000 to  
25 the plaintiff, in addition to \$70,000 paid outright as compensation during the term of the plaintiff's  
26 employment by AirWire. The defendants deny the remaining allegations of paragraph 21 of the  
27 Complaint.

28 22. The defendants deny the allegations set forth in Paragraph 22 of the Complaint,

1 given that, in fact, Plaintiff was paid the minimum wage for the approximate two-year period of  
2 time he was employed by AirWire.

3 23. Paragraph 23 of the Complaint appears to consist of a legal conclusion warranting  
4 no responsive pleading. It appears, however, to restate a portion of the relief that Plaintiff seeks.

5 24. Defendants deny the allegations set forth in Paragraph 24 of the Complaint, and  
6 aver, in addition, that the Plaintiff was paid \$70,000 in compensation over the 23 month period of  
7 employment plus Plaintiff received advances against compensation in excess of \$100,000. Any  
8 shortfall in compensation was not willful but due to the agreement between AirWire and Plaintiff.

9 **SECOND CAUSE OF ACTION**  
10 **(FLSA OVERTIME VIOLATIONS 29 U.S.C. § 201 et. seq.)**

11 25. Defendants hereby incorporate by reference their responses to Paragraphs 1 through  
12 24 of the Complaint as if set forth fully below.

13 26. Defendants deny the allegations in Paragraph 26, save and except that 29 U.S.C. §  
14 2000(e)(1) of the FLSA includes the language, “any person directly or indirectly in the interest of  
15 an employer relation to an employee.”

16 27. Answering Paragraph 27 of the Complaint, Defendants admit that Defendants  
17 Bengtson and Bagchi have minority ownership interests as shareholders in AirWire. The  
18 Defendants admit further that Bagchi was the Chief Executive Officer of AirWire and that the  
19 Plaintiff was Vice President of World-Wide Business Development for AirWire, his direct report  
20 was to Defendant Bagchi. Defendants admit, further, that Defendant Bengtson was and is  
21 AirWire’s Chairman of Board of Directors of AirWire and the Chief Financial Officer (CFO) of  
22 the Company. As Plaintiff was a Vice President of the Company in charge of world-wide business  
23 development, he was expected to be a self-starter and to formulate business development plans  
24 and, therefore, the defendants deny that Defendant Bagchi controlled and directed the plaintiff’s  
25 work, both in terms of the means and manner in which the Plaintiff performed his job. Defendants  
26 admit further that Defendant Bengtson, as CFO and Board Chairman, participated in this decision-  
27 making process in the management of AirWire related to his position as CFO. Defendants deny,  
28 however, that they made small installment payments to Plaintiff’s wages, instead advancing at

1 least \$100,000 to Plaintiff, in addition to \$70,000 paid outright as wages during the term of  
2 Plaintiff's employment by AirWire. Defendants deny the remaining allegations of Paragraph 27  
3 of the Complaint.

4         28. Paragraph 28 of the Complaint appears to consist of legal conclusions warranting  
5 no responsive pleading. If a responsive pleading is required, however, Defendants deny that  
6 AirWire was not able to meet the salary basis threshold for any exemptions to the overtime wage  
7 requirements, having paid Plaintiff more than the minimum wage under state or federal law.  
8 Furthermore, none of Defendants were covered employees under the FLSA or the California  
9 Labor Code. And, Defendants deny that AirWire stopped paying Plaintiffs wages. Instead,  
10 AirWire and the Plaintiff had agreed that Plaintiff would be paid compensation due at a later date.  
11 That is, the compensation was owing but not yet due.

12         29. Defendants have insufficient information with which to admit or deny the  
13 allegations Paragraph 29 of the Complaint. If a responsive pleading is required, however,  
14 Defendants have insufficient information to admit or deny the allegations of Paragraph 29 of the  
15 Complaint and, therefore, deny the same.

16         30. Defendants deny the allegations of Paragraph 30 of the Complaint.

17         31. Defendants deny, as alleged in Paragraph 31 of the Complaint, that AirWire had a  
18 policy and practice of failing to make, keep and preserve accurate records required by the FLSA  
19 with respect to Plaintiff, as Plaintiff was an exempt employee under the FLSA who was paid the  
20 same amount per week/month, notwithstanding the actual hours worked or not worked.  
21 Defendants aver further that the compensation Plaintiff received exceeded that required by the  
22 FLSA. Defendants deny the remaining allegations of Paragraph 31 of the Complaint.

23         32. Defendants admit, as alleged in Paragraph 32 of the Complaint, that Plaintiff is  
24 seeking damages in the amount of unpaid overtime compensation, but deny each and every  
25 allegation that Plaintiff is owed unpaid overtime compensation, liquidated damages, prejudgment  
26 interest, attorneys' fees and costs and any other legal and equitable relief as the Court deems just  
27 and proper.

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**THIRD CAUSE OF ACTION**  
**(FAILURE TO PAY AGREED UPON WAGES VIOLATIONS OF**  
**CALIFORNIA LABOR § 200 et. seq.)**

33. Defendants incorporate by reference their responses to Paragraphs 1 through 32 of the Complaint as if fully set forth below.

34. Defendants admit, as alleged in Paragraph 34 of the Complaint, that AirWire was, at all relevant times, the employer and the only employer of Plaintiff. Whether AirWire was, at all relevant times, an employer within the meaning of the California Labor Code and Industrial Welfare Commission, is a legal conclusion warranting no responsive pleading and a concept subject to proof at trial. Defendants deny that Defendants Bengtson and Bagchi are individually liable as employers as they were shareholders, but not the owners of AirWire. They were officers of AirWire and they acted on behalf of AirWire. Defendants deny the remaining allegations of Paragraph 34 of the Complaint.

35. Defendants admit as alleged in Paragraph 35 of the Complaint, that AirWire initially entered into an engagement with Plaintiff, wherein AirWire would pay compensation on a semi-monthly basis which amounted to \$175,000 per year. Defendants admit further that the position of Vice President of World-Wide Business Development carried with it all normal group health, dental and personal time off benefits in effect from time to time that were afforded the AirWire executive team in addition to an option to purchase 500,000 shares of the Company's common stock pursuant to the 2007 Stock Option Plan at the fair market value of the stock as determined by the Board of Directors at the time of the grant. The defendants deny the remaining allegations of Paragraph 35 of the Complaint.

36. Defendants admit as alleged in Paragraph 36 of the Complaint, that AirWire was unable to make payment to Plaintiff of his salary until the termination of his employment in March of 2018. Defendants deny the remaining allegations of Paragraph 36 of the Complaint.

37. Defendants admit as alleged in Paragraph 37 of the Complaint, that AirWire only was financially unable to pay Plaintiff his salary after June 2016, but aver that AirWire made significant advances amounting in excess of \$100,000 to Plaintiff, thereafter. AirWire also paid Plaintiff compensation in excess of that which might be due under the FLSA or the State of



1 California minimum wage provisions. Defendants deny the remaining allegations of Paragraph 37  
2 of the Complaint.

3 38. Defendants have insufficient information with which to admit or deny the  
4 allegations of Paragraph 38 of the Complaint and, therefore, deny the same.

5 39. Defendants deny the allegations of Paragraph 39 of the Complaint.

6 **FOURTH CAUSE OF ACTION**  
7 **(FAILURE TO PAY AT LEAST THE LEGAL MINIMUM WAGE RATE**  
8 **FOR ALL HOURS WORKED (IWC WAGE ORDER No. 4 § 4, Labor Code**  
9 **§ 1194, § 1197)**

10 40. Defendants incorporate by reference their responses to Paragraphs 1 through 39 of  
11 the Complaint as if set forth fully below.

12 41. Defendants admit, as alleged in Paragraph 41 of the Complaint, that AirWire was,  
13 at all relevant times, the employer and the only employer of Plaintiff currently known. Whether  
14 AirWire was, at all relevant times, an employer within the meaning of the California Labor Code  
15 and Industrial Welfare Commission, is a legal conclusion warranting no responsive pleading and a  
16 concept subject to proof at trial. Defendants deny further that Defendants Bengtson and Bagchi  
17 are individually liable as employers as they were shareholders, but not the owners of AirWire.  
18 They were officers of AirWire, and they acted on behalf of AirWire as part of the appointed  
19 management of AirWire as alleged in Paragraph 41. Defendants deny the remaining allegations  
20 of Paragraph 41 of the Complaint.

21 42. Answering Paragraph 42 of the Complaint, Defendants deny AirWire “stopped  
22 paying wages to Plaintiff.” Rather, Defendants aver that AirWire and Plaintiff agreed that  
23 Plaintiff would be compensated later at such time as funds were available. Furthermore, Plaintiff  
24 was actually paid compensation in excess of the minimum wage requirements of the FLSA and the  
25 California Labor Code. Moreover, Plaintiff was an exempt employee under the FLSA and the  
26 California Labor Code.

27 43. Paragraph 43 of the Complaint appears to consist of legal conclusions warranting  
28 no responsive pleading. If a responsive pleading is required, however, Defendants admit that  
29 Plaintiff was entitled to be paid compensation under his employment agreement with AirWire but

1 that AirWire and Plaintiff agreed he would be paid at a later date.

2 44. Defendants deny the allegations contained in Paragraph 44 of the Complaint.  
3 Further, Defendants aver that AirWire and Plaintiff agreed that Plaintiff would be paid  
4 compensation at a later date as further alleged herein.

5 45. Defendants deny the allegations of Paragraph 45 of the Complaint.

6 46. Defendants deny the allegations of Paragraph 46 of the Complaint.

7 47. Defendants deny the allegations of Paragraph 47 of the Complaint.

8 **FIFTH CAUSE OF ACTION**  
9 **(FAILURE TO PAY OVERTIME WAGES, IWC WAGE ORDER No. 4 § 3**  
10 **Labor Code § 510, 218.6, 1194)**

11 48. Defendants incorporate by reference their responses to Paragraphs 1 through 47 of  
12 the Complaint as if set forth fully below.

13 49. Defendants admit as alleged in Paragraph 49 of the Complaint, that AirWire was, at  
14 all relevant times, the employer and the only employer of the plaintiff. Whether AirWire was, at  
15 all relevant times, an employer within the meaning of the California Labor Code and Industrial  
16 Welfare Commission, is a legal conclusion warranting no responsive pleading and a concept  
17 subject to proof at trial. Defendants deny further that Defendants Bengtson and Bagchi are  
18 individually liable as employers as they were shareholders, but not the owners of AirWire. Rather,  
19 Defendants aver that they were officers of AirWire and they acted on behalf of AirWire as part of  
20 the appointed management team. Defendants deny the remaining allegations of Paragraph 49 of  
21 the Complaint.

22 50. Paragraph 50 of the Complaint appears to consist of legal conclusions warranting  
23 no responsive pleading. If a responsive pleading is required, however, Defendants admit that the  
24 only defendant subject to § 510 of the California Code and § 3 of the California IWC Wage Order  
25 No. 4 is AirWire, the Company. Defendants admit further that employees who are otherwise not  
26 exempt are to be compensated under state law at the rate of no less than one and one-half the  
27 regular time for any and all work in excess of eight hours in one work day, work in excess of 40  
28 hours in one work week, any work on the seventh day of any work week and at a rate of no less  
than double the regular rate for hours worked over 12 in a day or in excess of eight hours on the

seventh consecutive day. Defendants deny the remaining allegations of Paragraph 50 of the Complaint.

51. Defendants deny, as alleged in Paragraph 51 of the Complaint, that Plaintiff was denied any overtime pay as Plaintiff was an at all relevant times an exempt Vice-President of World-Wide Business Development under the California Labor Code. Further, Defendants deny that Plaintiff was required or suffered to work without compensation at any relevant time. Rather, AirWire and Plaintiff agreed that Plaintiff would be compensated at a later date as evidenced by the fact that he continued working and received substantial advances while he continued to work.

52. Defendants deny the allegations of Paragraph 52 of the Complaint.

53. Defendants deny the allegations of Paragraph 53 of the Complaint.

54. Defendants deny the allegations of Paragraph 54 of the Complaint.

**SIXTH CAUSE OF ACTION**  
**(FAILURE TO PAY WAGES AT TIME OF TERMINATION,**  
**VIOLATIONS OF CALIFORNIA CODE § 201 et. seq.)**

55. Defendants hereby incorporate by reference their responses to Paragraphs 1 through 54 of the Complaint as if set forth fully below.

56. Defendants admit, as alleged in Paragraph 56 of the Complaint, that AirWire was, at all relevant times, the employer and the only employer of the Plaintiff. Whether AirWire was, at all relevant times, an employer within the meaning of the California Labor Code and Industrial Welfare Commission, is a legal conclusion warranting no responsive pleading and a concept subject to proof at trial. Defendants deny further that Defendants Bengtson and Bagchi are individually liable as employers as they were shareholders, but not the owners of AirWire. They were officers of AirWire and they acted on behalf of AirWire as part of its appointed management team. Defendants deny the remaining allegations of Paragraph 56.

57. Defendants deny the allegations of Paragraph 57 of the Complaint.

58. Defendants deny the allegations of Paragraph 58 of the Complaint.

59. Defendants deny the allegations of Paragraph 59 of the Complaint.

60. Defendants deny the allegations of Paragraph 60 of the Complaint.

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1 **SEVENTH CAUSE OF ACTION**  
2 **(UNFAIR COMPETITION, CAL. BUS. & PROF. CODE § 17200)**

3 61. Defendants incorporate by reference their responses to Paragraphs 1 through 60 of  
4 the Complaint as if set forth fully below.

5 62. Defendants deny the allegations of Paragraph 62 of the Complaint.

6 63. Defendants deny the allegations of Paragraph 63 of the Complaint.

7 64. Defendants deny the allegations of Paragraph 64 of the Complaint.

8 **AFFIRMATIVE DEFENSES**

9 1. The Complaint fails to state a claim against defendants upon which relief can be  
10 granted.

11 2. Plaintiff failed to mitigate damages and/or losses claimed to have been suffered by  
12 him.

13 3. Without admitting that these answering Defendants have any dealings whatsoever  
14 with Plaintiff at all times, referred to in the Complaint, these answering Defendants, and each of  
15 them, exercised due care and good faith towards Plaintiff.

16 4. Plaintiff was an executive holding the position of Vice President of World-Wide  
17 Business Development for AirWire and was at all relevant times an exempt employee of AirWire.  
18 Therefore, Plaintiff should take nothing by way of the Complaint based upon the FLSA or the  
19 California Labor Code.

20 5. Defendants Bagchi and Bengtson were not employers for purposes of the FLSA  
21 and should be dismissed from those claims with prejudice.

22 6. There is no basis for personal liability for Defendants Bagchi and Bengtson under  
23 the California Labor Code and they should be dismissed from those claims with prejudice.

24 7. AirWire was not a covered entity under the FLSA, as its gross volume of income,  
25 sales and business done was less than \$500,000 annually at all pertinent times.

26 8. Plaintiff was paid, in fact, by AirWire in amounts in excess of any amount due  
27 under either the California minimum wage law or the FLSA minimum wage requirements, both as  
28 to the hourly wage rate as well as any overtime compensation.

1           9.       Without conceding liability by Defendants, Defendants are entitled to a setoff of at  
2 least \$170,000 from any award that Plaintiff might receive.

3           10.      The Complaint fails in all respects as AirWire and Plaintiff agreed that Plaintiff  
4 would be fully compensated at a later date as evidenced in part by the fact that Plaintiff continued  
5 to work without objection while receiving substantial advances from AirWire, thereby also  
6 preserving his opportunity to acquire 500,000 shares of stock in the company under the AirWire  
7 stock option plan.

8           11.      It has become necessary for Defendants to employ legal counsel and incur costs  
9 and expenses in the defense of Plaintiff's Complaint, such that Defendants are entitled to  
10 reasonable attorneys' fees, costs and expenses.

11          12.      Pursuant to Rule 11 of the Federal Rules of Civil Procedure, at the time of the filing  
12 of Defendants' answer, all possible affirmative defenses may not have been alleged as much as  
13 insufficient facts and other relevant information may not have been available after reasonable  
14 inquiry and, therefore, Defendants reserve the right to amend this answer to allege affirmative  
15 defenses if subsequent investigation warrants the same.

16          Wherefore, Defendants pray as follows:

17          1.       That Plaintiff's Complaint be dismissed with prejudice and that Plaintiff take  
18 nothing thereby;

19          2.       That the Court award to Defendants reasonable attorneys' fees and costs incurred  
20 herein; and

21          3.       For such other, further and additional relief as the Court deems just and proper.

22 DATED: March 31, 2020

LEWIS BRISBOIS BISGAARD & SMITH LLP

23 By: /s/ Robert I. Lockwood

24 Joseph R. Lordan

Robert I. Lockwood

25 Attorneys for Defendants AIRWIRE

TECHNOLOGIES, DEBASHIS BAGCHI, and

26 JON BENGTON

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**JURY DEMAND**

Defendants AIRWIRE TECHNOLOGIES, DEBASHIS BAGCHI, and JON BENGTON  
hereby request a trial by jury.

DATED: March 31, 2020

LEWIS BRISBOIS BISGAARD & SMITH LLP

By: /s/ Robert I. Lockwood

Joseph R. Lordan  
Robert I. Lockwood  
Attorneys for Defendants AIRWIRE  
TECHNOLOGIES, DEBASHIS BAGCHI, and  
JON BENGTON